Supreme Court, U.S.
FILED
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CLERK

85 - 1972

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD RONWIN,

Petitioner,

vs.

HON. WILLIAM A. HOLOHAN; HON. JACK D. H. HAYS; HON. JAMES DUKE CAMERON; and HON. STANLEY G. FELDMAN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioner pro se

QUESTION PRESENTED FOR REVIEW

I. Are Rules 28(c)(XII)(C) and (F), Vol. 17A, Arizona Revised Statutes, which govern hearings in contested applications for admission to the State Bar of Arizona unconstitutional on face or as applied by Respondents?

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Contents	i
Table of Authorities	ii
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions	2
Statement of the Case	4
Reasons for Granting the Writ	6
I. Rules 28(c)(XII)(C) and (F), Volume 17A Ariz. Rev. Stats., which govern hearings in contested applications for admission to the State Bar of Arizona are unconstitutional on face or as applied by Respondents.	6

	Page
Conclusion	10
Appendix	

TABLE OF AUTHORITIES

	Page
Application of Levine, 97 Ariz. 88, 397 P.2d 205 (1964)	8
Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011 (1970)	7,9,10
Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400 (1959)	7,9,10
Mathews v. Eldridge, 424 U.S. 319 (1976)	9
Schware v. Bd. of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752 (1957)	7,9,10
Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175 (1963)	7,9,10
U.S. Constitution, Statutes and Rules	
U.S. Constitution,	
Fifth Amendment	3
Fourteenth Amendment	3
U.S. Statutes,	
28 U.S.C. §1254	2

Arizona Statutes	Page
17A Ariz. Rev. Stats.,	
Rule 28(c)(XII)(C)	i, 1,3,5-8
Rule 28(c)(XII)(F)	i, 1,4-8

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OPINIONS BELOW

On June 7, 1984, the United States District Court for the District of Arizona entered an order which (i) declared that said court lacked subject matter jurisdiction; nevertheless, (ii) said court proceeded to adjudge Rules 28(c)(XII)(C) and (F), Vol.

17A A.R.S. to be constitutional and (iii) awarded attorneys' fees to Respondents. On the same day, a judgment was entered by said court. On appeal, the United States Court of Appeals, Ninth Circuit, entered a Memorandum decision on January 8, 1986 in which said court (i) reversed the district court by ruling that the lower court did have subject matter jurisdiction and (ii) reversed the award of attorneys' fees, but (iii) affirmed the district court's holding that said rules are constitutional. On March 6, 1986, the Ninth Circuit denied Petitioner's Petition for Rehearing. All said orders and judgments are reproduced in the Appendix.

JURISDICTION

This Petition is filed within 90 days after March 6, 1986. This Court's jurisdiction is invoked pursuant to 28 U.S.C.§1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Fifth Amendment

No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *

Fourteenth Amendment

Section 1. * * *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law: * * *

Rules of the Arizona Supreme Court, Volume 17A Arizona Revised Statutes

Rule 28(c)(XII)(C)

C. Formal Hearings on Character and Fitness. If the Committee on Character and Fitness[1] is unable to make the findings required to support a recommendation for the applicant's admission with respect to char-

1 - In Petitioner's case, Respondents have replaced their Committee on Character and Fitness by themselves and all applications for bar admission by Petitioner are handled by Respondents directly.

acter and fitness, the Committee shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications. * * *

Rule 28(c)(XII)(F)

F. Review by the [Arizona] Supreme Court. 1. An applicant aggrieved by any decision of * * *the Committee on Character and Fitness may * * * file a verified petition with [Respondents] for a review. * * *

2. * * * Thereupon [Respondents] shall consider the papers so filed together with the petition and response and make such order, hold such hearings and give such directions as it may in its discretion deem best * * *.

STATEMENT OF THE CASE

The complaint was filed on January 20, 1984 following denial of Petitioner's application for admission to the State Bar of Arizona which was the tenth (10th) consecutive application made by Petitioner that Respondents have denied without presenting

any charges against Petitioner or allowing any hearing at any stage in the adjudication of the application despite the fact that Petitioner had passed the Arizona State Bar examination in July, 1982 and had demanded an oral, evidentiary hearing on any questions concerning his application. The complaint alleged that two written rules of the Arizona Supreme Court; i.e., Rules 28(c)(XII)(C) and (F), address the question of hearings in contested bar application situations and that if said rules are constitutional on face then Respondents apply said rules in an unconstitutional manner. After an Answer was filed, Petitioner moved for summary judgment and Respondents did likewise. Thereafter, several other motions, responses and replies were filed. On June 7, 1984, the district court entered its order and on a separate sheet of paper, its judgment. The order denied Petitioner's motion for summary judgment and granted Respondent's motion for same.

Subsequently, on July 3, 1984, the district court granted $7,125.00 in attorney's fees to Respondents. Petitioner timely appealed. The United States Court of Appeals for the Ninth Circuit reversed the district court on the lower court's view that it lacked subject matter jurisdiction (yet, the lower court had proceeded to adjudicate the question presented here); reversed the lower court's award of attorney's fees to Respondents, but affirmed the lower court's view that said rules are constitutional. Petitioner filed a timely Petition for Rehearing in the Ninth Circuit which was denied on March 6, 1986.

REASONS FOR GRANTING THE WRIT

I. Rules 28(c)(XII)(C) and (F), Vol. 17A, Arizona Revised Statutes, which govern hearings in contested applications for admission to the State Bar of Arizona are unconstitutional on face or as applied by Respondents.

On several occasions this Court has said that no one can be excluded from the practice

of a profession, including law, by procedures which deny due process and that the due process required includes hearing, the right to call witnesses and to cross-examine adverse witnesses, and to have an impartial decisionmaker. In addition, some statement of the charges for denial are required. Willner v. Committee on Character and Fitness, 373 U.S. 96, 103-105, 83 S.Ct. 1175, 1180-1181 (1963); Schware v. Bd. of Bar Examiners, 353 U.S. 232, 238, 77 S.Ct. 752, 756 (1957); Greene v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411 (1959); Goldberg v. Kelly, 397 U.S. 254, 267, 269-271, 90 S. Ct. 1011, 1020-1022 (1970).

At first glance, Rule 28(c)(XII)(C) appears to make it mandatory that Respondent's Committee on Character and Fitness hold a hearing, but the subsequent language converts the mandatory language to discretion. Rule 28(c)(XII)(F) is clearly discretionary. These are the only rules of Respondents which

deal with hearings in connection with contested bar applications. If Respondents interpret said rules as discretionary, then they are clearly unconstitutional on face since, under said rules, Respondents can persist in denying applications for bar admission without hearings or the other elements of due process. That is precisely what Respondents have done in Petitioner's case by denying Petitioner's last ten (10) bar applications without any hearing or due process during the last ten (10) years. Respondents do not appear to have addressed said rules as such, but in Application of Levine, 97 Ariz. 88, 397 P.2d 205, 207 (1964), Respondents made it clear that they recognize this Court's views as expressed in the decisions cited above at 7. If Respondent's position in Application of Levine is taken as Respondent's interpretation that Rules 28(c)(XII)(C) and (F) make it mandatory to hold at least one hearing before a bar applica-

tion is denied or after one is denied, then said rules are facially constitutional. In that event, Respondents are applying said rules unconstitutionally by their persistent refusal to allow any hearing in Petitioner's case. That clearly is arbitrary and capricious and unconstitutional conduct, Willner; Schware, Greene; Goldberg. Furthermore, Petitioner is not the only applicant who has been denied hearing on bar applications that are contested.

The Ninth Circuit considered that said rules are constitutional relying on the authority of Mathews v. Eldridge, 424 U.S. 319, 335 (1976) which is a social security disability case. The notable point is that the Ninth Circuit failed to address the thrust of this Court's decisions in Willner; Schware; Greene and Goldberg. Moreover, the Ninth Circuit wrote, p. 3, Memorandum decision:

> ...we conclude these rules give applicants 'a meaningful opportunity to present their case' and a mandatory predeprivation hearing therefore is not necessary...

Fine! No hearing before denial of a bar application, but where is the hearing after or midway through the denial process? In Petitioner's situation, there is no hearing before, midway or after denial of his applitions;and that is unconstitutional.

CONCLUSION

Respondents, the district court and the Ninth Circuit all misread this Court's desions in Willner; Schware; Greene and Goldberg. The Ninth Circuit is a large circuit affecting many millions of citizens. Therefore this Court should clarify what it means by "due process" and when it is due by granting the Writ.

Respectfully submitted

_____

Edward Ronwin

(APPENDIX FOLLOWS)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Caption)

Filed: March 6, 1986

(CA) NO. 84-2201
D.C. No. CV 84-102
PHX-CAM

ORDER

Before: BROWNING, Chief Judge, SNEED and HUG, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

(Caption)

Filed: Jan. 8, 1986

(CA) No. 84-2201
D.C. No. CV 82-102 PHX-CAM

MEMORANDUM*

Appeal from the United States District Court for the District of Arizona Carl A. Muecke, District Judge, Presiding. Argued and Submitted December 3, 1985 - Phoenix, Arizona

Before: BROWNING, Chief Judge, SNEED and HUG, Circuit Judges

Appellant Edward Ronwin appeals the district court's grant of summary judgment to defendants, justices of the Arizona Supreme Court, in Ronwin's action under 42 U.S.C. §1983 (1982), alleging the court's bar admission rules are unconstitutional because they do not require a mandatory hearing upon denial of an application. We affirm the summary judgment but reverse the grant of attorney's fees to appellees.

Appellant, a member of the Iowa bar, was first denied admission to the Arizona bar in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

1974, after a formal hearing resulted in a finding that appellant was mentally unfit to engage in the practice of law. Application of Ronwin, 113 Ariz. 357, 555 P.2d 315 (1976). Appellant has since filed nine additional unsuccessful applications for admission, and numerous lawsuits in federal court challenging denials of these successive applications. After passing the bar examination in July, 1982, appellant applied for admission a tenth time. The Arizona Supreme Court concluded that an evidentiary hearing was unnecessary and denied his application. Matter of Ronwin, 139 Ariz. 576, 680 P.2d 107 (1983). Appellant then brought this action.

The district court concluded that it lacked subject matter jurisdiction over appellant's suit. We disagree. Appellant's complaint presents a constitutional challenge to the general application of provisions of the state's rules governing admission to the bar

that relate to evidentiary hearings, and requests general declaratory and injunctive rather than personal relief. Federal courts have jurisdiction over such an action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Brown v. Board of Bar Examiners, 623 F.2d 605, 609 (9th Cir. 1980).

We affirm the grant of summary judgment because the rules challenged by appellant are constitutional as a matter of law. Rule 28(c)(XII)(C) provides that the Committee on Character and Fitness "shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications." 17A Ariz. Rev. Stat. Sup. Ct. Rule 28(c)(XII)(C)(1985). Subsection F of that rulte gives an applicant the right to review of the Committee's decision in the Arizona Supreme Court. Applying the due process tests

enunciated in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), we conclude these rules give applicants "a meaningful opportunity to present their case" and a mandatory pre-deprivation hearing therefore is not necessary. Id. at 349.

A district court may award attorney's fees in an action under section 1983 only when the action is unfounded, meritless, unreasonable, frivolous,or brought vexatiously or in bad faith. See Ellis v. Cassidy, 625 F.2d 227, 230 (9th Cir.1980). None of these conditions is satisfied here. Appellant properly invoked the district court's subject matter jurisdiction, and his constitutional challenge is not frivolous.

Appellant's other contentions are meritless.

We decline to award attorney's fees on appeal as a sanction under Fed. R. App. P.38.

AFFIRMED IN PART, REVERSED IN PART.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Caption)

Filed: June 7, 1984

Civ 84-102 PHX CAM

JUDGMENT

This action came on for hearing before the Court, the Honorable C.A. Muecke, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Defendants' Cross-Motion for Summary Judgment having been granted, that the Plaintiff take nothing and the action is hereby dismissed.

Dated at Phoenix, Arizona this 7th day of June, 1984.

W.J.FURSTENAU, CLERK

By: /s/ ANA E(?) BACA
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Caption) Filed: June 7,1984

ORDER

Plaintiff in this action filed a Motion for Summary Judgment, to which defendants responded with a Cross-Motion for Summary Judgment, and oral argument was scheduled for Monday, June 4, 1984. Only counsel for defendants appeared for the hearing, while plaintiff, acting pro per, indicated that he would not appear, since he had filed a Request for a Writ of Mandamus, and it is his feeling that Judge Muecke should recuse himself from all further proceedings. A copy of that hand-written letter is attached to this Order. (The copy was not attached to the copy of the Order that Petitioner received).

Nevertheless, no authority has been presented to this Court for the proposition that a Writ of Mandamus is considered to have been issued when it was applied for. In any event,

the defendants made no oral argument to the Court, and stated that they would submit the matter to the Court on the basis of the pleadings already filed.

The complaint in the instant action is plaintiff's tenth application for admission to the State Bar of Arizona. The instant application was filed in June of 1983, while plaintiff passed the Arizona Bar examination for the first time in July of 1982. Plaintiff appears to be requesting a written statement of all charges and/or reasons that the defendants refused to admit him to the State Bar of Arizona, as well as an evidentiary hearing on any of the reasons given.

The parties have not presented any genuine issues of material fact which would preclude the Court from ruling on either of these motions at this time. Essentially, three basic issues before this Court are:

(1) Should plaintiff's present claim be barred by the doctrines of res judicata or

collateral estoppel?

(2) Does the Court lack subject matter jurisdiction to hear this matter?

(3) Is Rule 28(c) of the Arizona Rules of Court unconstitutional, in that it does not comply with due process requirements?

RES JUDICATA AND COLLATERAL ESTOPPEL

The doctrine of res judicata "...provides that when a final judgment has been entered on the merits of a case '[i]t is a finality as to the claim or demand in controversy, including parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" Nevada v. United States, ___U.S.___, 103 S.Ct. 2906, 2918 (1983), citing Cromwell v. County of Sac, 94 U.S. 351, 352 (1876).

It is instructive to examine the past history of plaintiff's actions both in the state

and federal courts.

In Application of Ronwin, 113 Ariz. 357, 555 P.2d 315 (1976), plaintiff was not granted permission to sit for the bar examination in 1974, and a two-day hearing took place under the auspices of the Arizona Supreme Court's Special Committee on Examinations and Admissions. Plaintiff was deemed not physically nor mentally able to engage in the active and continuous practice of law, and he declared that he had been deprived of due process during the hearing. Cert. was denied by the United States Supreme Court on February 28, 1977.

Later, in Ronwin v. Daughton, No. CIV 76-872 PHX-MLR (D.Ariz. 1977), plaintiff alleged that defendants had conspired to orchestrate a sham hearing before the Special Committee and that the design of the conspiracy was to deprive plaintiff of the rights, privileges and immunities secured by the First, Fifth and Fourteenth Amendments. In that case,

judgment was entered in favor of defendants on March 4, 1977, on the grounds that the court lacked subject matter jurisdiction and that the complaint did not present a substantial federal question. Additional grounds for the decision were that the claim was barred by res judicata and that the members of the Arizona State Bar Committee were protected by the doctrine of judicial immunity. This decision was affirmed by the Ninth Circuit Court of Appeals on August 9, 1979.

Then, in Ronwin v. Segal, No. CIV 76-924 PHX-MLR (D. Ariz. 1977), plaintiff once again alleged that defendants had conspired to deprive him of his rights, privileges and immunities under the Constitution, and sought an order commanding defendants to cease all further acts of conspiracy, and to specifiy their reasons for denying him admission.The action was dismissed, and the dismissal was later affirmed on November 14, 1980, on appeal to the Ninth Circuit.

Another action was brought in 1979, in which plaintiff maintained that the action of the defendants represented an unconstitutional application of Rule 28(c) of the Arizona Rules of Court. The motion to dismiss was granted in Ronwin v. Gage, No. CIV 78-214 PHX-MLR (D. Ariz. 1979), and no appeal was taken.

On November 5, 1977, the Arizona Supreme Court issued an order directing that all further applications by plaintiff were to be forwarded directly to the it(sic). The Court further ruled that since plaintiff had made no further showing of any substantial change in his mental con(sic) since that Court's decision in Application of Ronwin, supra, his application for membership in the State Bar of Arizona would be denied. Plaintiff requested review by filing a Petition for Writ of Certiorari with the United States Supreme Court, which was denied on October 2, 1978 in Ronwin v. The Supreme Court of Arizona,

439 U.S. 828.

On March 6, 1979, plaintiff filed another action, based upon the Civil Rights Act, to challenge the Arizona Supreme Court's denial of his December, 1978 application for admission to the State Bar of Arizona,claiming again that the conduct of defendants represented an unconstitutional application of Rule 28(c), supra. Judgment was entered by this Court in Ronwin v. Von Ammon, No. CIV 79-175 PHX-WEC (D. Ariz.1980), and affirmed by the Ninth Circuit by memorandum opinion in Ronwin v. von Ammon, Nos. 81-5148 and 81-5149 (9th Cir., Aug. 16, 1982).

The next significant decision by the state court was In re Ronwin, 136 Ariz.566, 667 P.2d 1281, cert. denied sub nom. Ronwin v. Supreme Court of Arizona, __U.S.__, (Nov. 7, 1983), wherein plaintiff again asked the United States Supreme Court to determine whether the Arizona Supreme Court could deny an application for admission to the Bar without

adequate notice and without hearing, and could declare an application(sic) mentally unable to practice law using the techniques of "trial by judicial notice." The petition was denied.

Another Petition for Writ of Mandamus to the Supreme Court of Arizona, In re Edward Ronwin, No. 83-899 __U.S.__, 52 U.S.L.W. 3551 (Jan. 23, 1984), was denied, where plaintiff claimed that the state Court had refused to "obey the due process clause of the Fifth and Fourteenth Amendments; this Court's decisions; and its own rules and decisions which require that Bar applicants be accorded an opportunity for hearing with due process safeguards before final determination of their applications for admissions to practice law."

It is clear to the Court, based on all of the above cases, that no new issues have been raised in the instant case,and that the principles of res judicata and collateral estoppel

definitely come into play, despite plaintiff's apparent belief that each time there is a new violation (i.e., each time he is denied admission to the State Bar of Arizona), a new evidentiary hearing is necessary.

Plaintiff cites Feldman v. Gardner, 661 F.2d 1295 (D.C.Cir. 1981), where several plaintiffs who had unsuccessfully sought permission to sit for the District of Columbia bar examination brought separate actions challenging the validity of a rule which prevented them from so sitting, the the(sic) court held that proceedings before the District of Columbia Court of Appeals were of a non-judicial character and did not produce a judgment reviewable exclusively by the Supreme Court so that the plaintiffs' district court suits were jurisdictionally appropriate for consideration and disposition of their constitutional claims.

In contrast to Feldman, supra, however,

plaintiff in the instant case both sat for and passed the Arizona State Bar Examination in 1982, and has failed to provide any new information regarding his mental capabilities to practice law.

In Matter of Ronwin, 667 P.2d 1281, 1285 (Ariz. 1983), (superceded by 139 Ariz. 576, 680 P.2d 107 as referred to in the Court of Appeals Memorandum--Petitioner's note), the Arizona Supreme Court stated that the issue "..is not merely capacity and capability, but also behavior. On the former issue, we must defer to the doctors and accept their findings that Ronwin is'capable.'...On the latter, we must examine the record to determine if it establishes that Ronwin's personality disorder impairs his conduct to such a degree that he is not mentally able to engage in the practice of law."

The Court further stated at 667 P.2d 1287 that "..The examples cited suffice to establish that Ronwin's reaction to adversity mani-

fests itself in behavior which is grossly improper for a lawyer and which cannot be tolerated. This conclusion does not evince a lack of toleration for Ronwin; it simply acknowledges that we can make no special rule for Ronwin."

SUBJECT MATTER JURISDICTION

As the court held in Brown v. Board of Bar Examiners of State of Nevada, 623 F.2d 605, 610 (9th Cir. 1980), a state court's decision on an individual application for admission to the bar may not be disturbed in an original suit in federal district court, and that orders may be reviewed only by the United States Supreme Court. The court noted: "...despite superficial indicia of a general constitutional attack, Brown's cause of action was inextricably intertwined with her endeavor to acquire a waiver...An individual claim may naturally be utilized to confer sufficient standing to challenge general rules and regulations, but appellate

review of a decision on an individual application is not available from a federal district court."

There is a long line of cases which have held that the only way for an applicant to obtain review of a state court's action in denying admission to the bar is by writ of certiorari or appeal to the United States Supreme Court. Miller v. Washington State Bar Association, 679 F.2d 1313 (9th Cir. 1982); Coogan v. Cincinnati Bar Association, 431 F.2d 1209 (6th Cir. 1970).

The critical question is whether an action is a challenge to a rule of general application or an attack on a state court's application of a rule of a particular applicant, and where the action falls in the latter category, the federal district court simply lacks subject matter jurisdiction to hear the case. Plaintiff's arguments that an individual claim is enough to permit an attack on general rules and regulations and that the inclusion of a

demand for personal relief provides no basis for rejecting a challenge to a rule of general application are not convincing in the light of the authorities provided by defendants on this issue.

CONSTITUTIONALITY OF RULE 28(C)

Rule 28(c)(XII)(C) states, in pertinent part, that "[I]if the Committee on Character and Fitness is unable to make the findings required to support recommendation for the applicant's admission with respect to character and fitness, the Committee shall hold such hearing or hearings as may be reasonably required to enable the Committee to pass upon the applicant's qualifications..."

There is no question that the Arizona Supreme Court found that the plaintiff was not mentally able to engage in the active and continuous practice of law and denied his applications for admission since he had failed to show any substantial change in his mental condition from the time of the denial

of his first application. In In re Ronwin, 667 P.2d 1281 (Ariz. 1983), the Court concluded that an evidentiary hearing was unnecessary, since a determination of the issues on which plaintiff wished to produce evidence was irrelevant to the Court's determination of plaintiff's mental ability to engage in the practice of law.

The Court also found that plaintiff's action exceeded occasional anger or loss of control when he was confronted by authority. Once an applicant or practicing attorney has been found deficient in those qualities that a state requires of its practitioners, the burden is on that person to show a change in circumstances. Matter of Braverman, 549 F.2d 913 (4th Cir. 1976); Levenson v. Mills, 294 F.2d 397 (1st Cir. 1961), cert. denied, 368 U.S. 954 (1962).

This Court agrees, in this regard, with defendants statement that requiring plaintiff to shoulder the burden of showing a

change in circumstances is no more a denial of due process of law than requiring the plaintiff to establish a prima facie case to avoid dismissal of an action.

Based upon the foregoing circumstances and arguments, and upon a thorough examination of all of the authorities cited by the parties herein, this Court is convinced that plaintiff's Motion for Summary Judgment should be denied, while defendants' Cross-Motion for Summary Judgment should be granted.

Accordingly,

IT IS ORDERED that plaintiff's Motion for Summary Judgment, filed on March 12, 1984, is denied

IT IS FURTHER ORDERED that defendants' Cross-Motion for Summary Judgment, filed on April 11, 1984, is granted.

DATED this 5 day of June, 1984

/s/ C.A.Muecke

C.A. Muecke, Chief Judge